

DATE: November 4, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-12749

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Jonathan A. Beyer, Esquire, Department Counsel

**FOR APPLICANT**

Charles Jerome Ware, Esquire

**SYNOPSIS**

Applicant's financial irresponsibility was not mitigated where his debts were caused, in part, by his own irresponsibility in not having sufficient capital for his business start-up and using personal credit cards for business expenses, and where he had taken no effective action to address his personal indebtedness, despite having positive cash flow. The one debt he was paying was precipitated by a judgment garnishment of his bank account. Applicant's falsification of his financial history suggested he could not be relied upon to state the truth if the truth presented potential adverse consequences to his personal interest. Clearance denied.

**STATEMENT OF THE CASE**

On 28 June 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding<sup>(1)</sup> that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 15 July 2002, Applicant answered the SOR and requested a hearing. The case was assigned to me on 18 September 2002, and received by me on 23 September 2002. On 2 October 2002, I issued a notice of hearing for 21 October 2002.

At the hearing, the Government presented six exhibits--admitted without objection--and no witnesses; Applicant presented three exhibits--admitted without objection--and the testimony of two witnesses, including himself. DOHA received the transcript on 29 October 2002.

**PROCEDURAL ISSUES**

At the hearing, Applicant amended his Answer to subparagraphs 1.a.-d. to admit those allegations (Tr. 11). Applicant had previously denied those allegations on the ground that he had to conduct further investigation of the alleged debts. I granted the amendment (Tr. 12).

## FINDINGS OF FACT

Applicant admitted the allegations of the SOR, except for subparagraph 1.e., and paragraphs 2. and 3. Accordingly, I incorporate the admissions as findings of fact.

Applicant--a 59-year old employee of a defense contractor--seeks access to classified information. He received an M.B.A. degree from a major university in 1972 (G.E. 1, Tr. 60); since that time he has been employed in various positions in the business world (Tr. 60).

On 13 November 2001, Applicant falsified a Questionnaire for National Security Position (QNSP)(SF 86)(G.E. 1) by answering "no" to two questions requiring Applicant to disclose any accounts 180 days past due in the last seven years (question 28a) or currently 90 days past due (question 28b). In fact, he failed to disclose five past due debts totaling over \$26,000.00.<sup>(2)</sup> He was also alleged to have falsified his QNSP by answering "no" to two questions requiring Applicant to disclose any unpaid judgment in the last seven years (question 27d) or any civil actions in the last seven year (question 29). However, while credit bureau reports (G.E. 2, A.E. A) reflect that the judgment alleged in subparagraph 1.f. was recorded in April 2001, the record does not reflect that Applicant was aware of the judgment before March 2002, when the judgment creditor obtained a garnishment of Applicant's bank account (A.E. C, Tr. 26, 36).<sup>(3)</sup>

Applicant consistently denied any intent to falsify his QNSP by omitting his past due debts. However, he has provided conflicting explanations for his omissions. In his sworn statement (G.E. 3), he stated that the accounts were several years old and he did not have the details of the accounts (names, numbers, and amounts owed). Further, he knew the mortgage account (that belonged to his ex-spouse) was still on his credit report, because he had tried unsuccessfully to have it removed. At the hearing, Applicant variously claimed he was in a hurry when he completed the QNSP (Tr. 30), or that he thought the debts went away when the creditor charged off the accounts (Tr. 41, 47-48, 59). Nevertheless, Applicant was aware that the Government was concerned about his finances (Tr. 55-56), and had received dunning notices from his creditors when he could not pay his accounts (Tr. 46-48).

Setting aside the mortgage that I conclude was not Applicant's, the SOR alleges Applicant's four delinquent credit accounts totaling over \$15,000.00, charged off in January 1997 (1.b.), March 1997 (1.a., 1.c.) and August 1999 (1.d.). The SOR also alleges an April 2001 judgment against Applicant for over \$11,000.00.

Applicant first became aware of the judgement in early 2002, when he received a garnishment notice from his bank (Tr. 26, 36, 39; A.E. C.). He believes the judgment creditor is a successor-in-interest on another account, but does not recall the original creditor (Tr. 44). Applicant reached a repayment agreement with the creditor in March 2002 (G.E. 5), providing six post-dated checks to be credited to the account as dated. In September 2002, Applicant provided another six post-dated checks (A.E. B; Tr. 27, 37-39). Nevertheless, a balance of approximately \$3,500.00 remains (Tr. 29, 53).

Applicant has taken no steps to address the four past due accounts which have not been taken to judgment (Tr. 50-53), despite the fact that his Personal Financial Statement (G.E. 4) reflects a positive cash flow that continues (Tr. 53-54). He has considered a debt consolidation loan, but has taken no steps to implement that plan (Tr. 42).

Applicant attributed his financial problems to using his personal credit cards to finance his start-up business in 1996 (Tr. 40, 44-46). He got behind and was unable to keep up the payments. However, he has not addressed his personal debt despite the fact that the business has started doing better (Tr. 32).

The record contains no evidence of Applicant's work performance.

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case

can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

### **FINANCIAL CONSIDERATIONS (GUIDELINE F)**

E2.A6.1.1. The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations;

E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

E2.A6.1.3. Conditions that could mitigate security concerns include:

E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment. . . divorce or separation).

### **PERSONAL CONDUCT (GUIDELINE E)**

E2A5.1.1. The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. . .

E2. A5.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, . . . in connection with a personnel security or trustworthiness determination;

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

### **CRIMINAL CONDUCT (GUIDELINE J)**

E2.A10.1.1. A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

E2.A10.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;

E2.A10.1.2.2. A single serious crime or multiple lesser offenses.

E2.A10.1.3. Conditions that could mitigate security concerns include:

None.

### **Burden of Proof**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

### **CONCLUSIONS**

The Government has established its case under Guideline F. The record evidence establishes Applicant's history of indebtedness and his current failure to address that indebtedness despite having the means to do so. While circumstances beyond his control may have contributed to the original indebtedness--although a slow start to a new company seems fairly foreseeable--his current financial difficulties are due largely to his inadequate handling of his finances. He is not paying on any of the charged off credit card accounts. The one debt being paid, the judgment account, cannot be said to represent a good-faith effort to pay the account as Applicant took steps to address the account only when his bank account was garnished.<sup>(4)</sup>

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and not isolated; indeed they are ongoing. His belated--and incomplete--efforts to repay his creditors or otherwise resolve his debts does not constitute a good-faith effort within the meaning of the Directive. I find Guideline F. against Applicant.

The Government has established its case under Guideline E. Applicant knew he had past due accounts going back many years, and failed to disclose them. His claim that he thought the accounts had gone away is incredible given his educational background and business experience. Further, the record reflects that Applicant was aware of his past due accounts at the time he completed his clearance application, even if he did not have ready access to the details of the accounts. The omissions had the potential to influence the course of the background investigation. I find Guideline E. against Applicant.

The Government has established its case under Guideline J. Applicant's criminal conduct is recent. I find Guideline J. against Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: For the Applicant

Subparagraph f: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: Against the Applicant

Paragraph 3. Guideline J: Against the Applicant

Subparagraph a: Against the Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996, and by Change 4 dated 20 April 1999 (Directive).
2. Applicant was also alleged to have omitted the mortgage debt at subparagraph 1.e., but I accept his testimony (Tr. 24-25, 32-36)--corroborated by his ex-spouse (Tr. 64-70), his sworn statement (G.E. 3), and the 3 May 1990 quit claim deed (G.E. 6)--that Applicant's ex-spouse was solely responsible for this account.
3. However, while I thus conclude that Applicant did not falsify the answers to the two questions alleged in subparagraph 2.a., I conclude that Applicant failed to disclose the underlying debt as alleged in subparagraph 2.b.
4. This is so even though I accept Applicant's claim that he did not know about the judgment until he received the garnishment notice; the fact that the creditor took the account to court indicates that Applicant did not pay as required before the judgment.